

CERTIFIED FOR PUBLICATION
COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE
STATE OF CALIFORNIA

MHC FINANCING LIMITED
PARTNERSHIP TWO,

Plaintiff and Appellant,

v.

CITY OF SANTEE,

Defendant and Appellant.

D042631, D043129

(Super. Ct. No. 777094)

ORDER DENYING REHEARING
AND MODIFYING OPINION
[NO CHANGE IN JUDGMENT]

THE COURT:

The petition for rehearing is denied.

It is ordered that the opinion filed herein on January 25, 2005, is modified as follows:

1. On page 34, at the end of the second paragraph beginning "Thus, *Birkenfield* supports," the following sentence is added after the sentence, "They do not render Ordinance 412 entirely invalid":

However, the matter should be remanded for the trial court to determine whether MHC suffered any legally remediable injury as a result of enforcement of any of the provisions in Ordinances 381 and 412 that the court found to be unconstitutional and, if so, the proper remedy for such injury.

2. On page 40, the paragraph under Disposition is replaced entirely with the following paragraph:

The portions of the judgment declaring Ordinance 412 void, enjoining the City from enforcing Ordinance 412, and awarding MHC the remedy of future rent increases and damages in the amount of \$4,316 are reversed. The judgment is otherwise affirmed. The order denying MHC's motion for attorney fees is affirmed. The matter is remanded for further proceedings to determine (1) whether MHC suffered any legally remediable injury as a result of any differences between Ordinance 412 and Ordinance 381 and the retroactive application of Ordinance 412 to the effective date of Ordinance 381; (2) whether MHC suffered any legally remediable injury as a result of enforcement of any of the provisions in Ordinances 381 and 412 that the court found to be unconstitutional; and (3) the proper remedy for any such injury. The City is awarded its costs on appeal.

There is no change in the judgment.

HALLER, Acting P. J.

Copies to: All parties